Supreme Court, U.S.
FILED
JAN 24 1983
ALEXANDER L. STEVAS
CLERK

No. 82-1027
IN THE

Supreme Court of the United States

October Term, 1982

GOLDEN RAIN FOUNDATION OF LAGUNA HILLS,
Appellant,

vs.

LAGUNA PUBLISHING COMPANY,
Appellee.

On Appeal From the Court of Appeal of the State of California.

APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS.

GIRARD E. BOUDREAU, JR.,
Counsel of Record,
DOROTHEA SUMMERELL,
O'MELVENY & MYERS,
610 Newport Center Drive,
Seventeenth Floor,
Newport Beach, Calif. 92660,
(714) 760-9600,
Attorneys for Appellant.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

TABLE OF CONTENTS

Page

Appellant's Reply to Appellee's Motion to Dismiss ... 1

TABLE OF AUTHORITIES

Cases

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 1, 2

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974) 3

Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977) 4

PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980) 4

United States v. Haley, 358 U.S. 644 (1959) 4

United States v. Maryland Savings-Share Insurance Corp., 400 U.S. 4 (1970) 4

Constitution

United States Constitution, First Amendment 2

United States Constitution, Fourteenth Amendment ... 2

Rule

Revised Rules of the Supreme Court of the United States, Rule 10.3 3

No. 82-1027

IN THE

Supreme Court of the United States

October Term, 1982

GOLDEN RAIN FOUNDATION OF LAGUNA HILLS,
Appellant,

vs.

LAGUNA PUBLISHING COMPANY,
Appellee.

APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS.

Appellee's motion to dismiss is without merit. First, it is clear that the decision of the California Court of Appeal is final under the well-established standards reviewed in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 476-87 (1975). In *Cox*, the Court noted that a judgment such as that here in issue is final for the purpose of appeal under section 1257:

> [T]here are those situations where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state

> proceedings still to come. In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation.

420 U.S. at 482-83. The Court held in *Cox* that the judgment before it, which upheld a Georgia statute prohibiting publication of a rape victim's name against a challenge to its constitutionality under the First and Fourteenth Amendments, was "final" in the sense required. The Court stated:

> The Georgia Supreme Court's judgment is plainly final on the federal issue and is not subject to further review in the state courts. *Appellants will be liable for damages if the elements of the state cause of action are proved. They may prevail at trial on nonfederal grounds, it is true, but if the Georgia court erroneously upheld the statute, there should be no trial at all.* Moreover, even if appellants prevailed at trial and made unnecessary further consideration of the constitutional question, there would remain in effect the unreviewed decision of the State Supreme Court that a civil action for publishing the name of a rape victim disclosed in a public judicial proceeding may go forward despite the First and Fourteenth Amendments. . . . On the other hand, if we now hold that the First and Fourteenth Amendments bar civil liability for broadcasting the victim's name, this litigation ends. Given these factors — that the litigation could be terminated by our decision on the merits and that a failure to decide the question now will leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt — we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality.

Id. at 435-36. (Footnote omitted; emphasis supplied.) *Accord, Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 246-47 & n.6 (1974).

Second, notwithstanding appellee's misplaced efforts to capitalize on a semantic contortion of a part of the language contained in the Notice of Appeal, it is also clear that the appeal was properly taken from the decision of the California Court of Appeal which became final, and thus appealable to this Court, only upon the order of the California Supreme Court denying hearing dated August 18, 1982. The first two lines of the Notice of Appeal clearly identify the court rendering the decision from which this appeal is taken, and pursuant to Rule 10.3 of the Revised Rules of the Supreme Court of the United States, the Notice of Appeal was filed with the clerk of the California Court of Appeal. Likewise, the Jurisdictional Statement filed herein makes it abundantly clear that the appeal is taken from the decision of the California Court of Appeal. The reference in the Notice of Appeal to the order of the California Supreme Court denying hearing is made solely for the purpose of demonstrating the fact and timing of the finality of the decision from which the appeal is taken. (*See* Appendix G, p. 143 of the Jurisdictional Statement.)

Appellee's suggestion that the issues raised by this appeal are moot is preposterous inasmuch as appellee is seeking to recover millions of dollars in damages pursuant to the very judgment which is the subject of this appeal.[1] As appellee has repeatedly noted in its Motion to Dismiss, if this appeal is dismissed, there will be a trial to determine the

---

[1]In its Motion to Dismiss, appellee makes much of the fact that retrial had been set for April 11, 1983, and that appellant had moved to vacate that date. It should be noted that on January 13, 1983, the superior court granted appellant's motion and ordered that the scheduled trial date be vacated.

amount of damages appellee incurred by reason of its "unconstitutional" exclusion from Leisure World.

Appellee's final argument that the Court should not take jurisdiction because the decision of the California Court of Appeal is based on "substantial and sufficient nonfederal grounds" is definitively rejected by *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980).

As demonstrated in appellant's Jurisdictional Statement, the decision by the California court was patently erroneous. In light of the fact that appellee has failed to address the merits of the appeal or to provide support for the decision below and instead has relied solely upon erroneous technical and procedural arguments in support of its Motion to Dismiss, appellant respectfully suggests that this is a case particularly appropriate for summary reversal of the decision below. *See, e.g., Oklahoma Publishing Co. v. District Court*, 430 U.S. 308 (1977); *United States v. Maryland Savings-Share Insurance Corp.*, 400 U.S. 4 (1970); *United States v. Haley*, 358 U.S. 644 (1959).

Dated: January 20, 1983.

Respectfully submitted,

GIRARD E. BOUDREAU, JR.,
Counsel of Record,
DOROTHEA SUMMERELL,
O'MELVENY & MYERS,
Attorneys for Appellant.